

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 16 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LALBHAI DHEDABHAI RATHWA

Versus

STATE OF GUJARAT

Appearance:

MR MA KALATHIL for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/02/98

ORAL JUDGEMENT

1. Vide earlier order, dated 13.1.1998 notice was issued for admission and in response to same Ld.APP.Mr.A.J.Desai appeared. Rule. With the consent of both parties matter has been taken for final hearing and is being disposed of by this judgment.

2. Being aggrieved and dissatisfied by the judgment and order passed by the Ld.JMFC, Chhota Udepur camp at Jetpurpavi dated 8.1.1997 in the matter of Criminal Case

No.98/92 and the judgment and order passed by the Ld.Sessions Judge, Baroda, dated 20.12.1997 in the matter of Criminal Appeal No.1/97 the petitioner who was the original accused in the Criminal Case No.98/92 has filed the present revision application.

3. Vide judgment dated 18.1.1997 in the Criminal Case No.98/92 the Ld.JMFC, Chhota Udepur has convicted the petitioner under section 255(2) of Cr.P.C. for having committed offence made punishable under section 66(1)(b) of Bombay Prohibition Act and has sentenced him to undergo Simple Imprisonment for three months and pay fine of Rs.500/- and in default the accused is sentenced to undergo further Simple Imprisonment for 30 days.

4. The above stated order of the Ld.JMFC, Chhota Udepur was sought to be assailed by the present petitioner in the Criminal Appeal No.1/97 filed in the Court of Ld.District Judge, Baroda. That by judgment and order dated 20.12.1997 the Ld.Additional Sessions Judge, Baroda has dismissed the appeal and has confirmed the order passed by Ld.JMFC, Chhota Udepur on 8.1.1997 in the Criminal Case No.98/92.

5. Shri M.A.Kalathil, Ld.advocate appearing on behalf of the petitioner has contended that the trial court as well as the appellate court have committed gross error in appreciating the evidence and applying relevant provisions of law, and thereby the said orders of conviction and sentence are required to be set aside. It is submitted on behalf of the petitioner that as per the evidence recorded by the trial court, P.W.1 panch has turned hostile and the 2nd panch was not examined by the prosecution. Under the circumstances, except the evidence of Investigation Officer, there is no evidence to hold that at the relevant time the accused was found in a condition under the influence of intoxication. Further more, it is submitted that the evidence of P.W.2 and P.W.3 are contradictory inasmuch as the P.W.2, Dr.Hemangini has deposed that the accused was brought to her for medical examination by one Bhikhabhai Ganpatbhai while the Investigation Officer P.W.3 Laxmanbhai Mavjibhai has deposed that the accused was sent for medical examination along with one Vijay. It is submitted on behalf of the petitioner that the prosecution has failed to examine either Bhikhabhai Ganpatbhai or Vijaybhai and as such the story deposed by the complainant inasmuch as that on 18.8.91 at about 1945 hrs the accused was found at his home by the police in drunken condition and thereby he was arrested has remained uncorroborated. It is further submitted that

the panchnama produced on the record disclose the fact that it was started at 1815 hrs and completed at 1945 hrs on 18.8.91. However, as per FIR it was lodged at 1945 hrs and thereby it should be inferred that police has filed concocted case against the accused and had prepared document according to their requirement. It is further submitted that as per the chargesheet the accused is alleged to have committed the offence made punishable under section 66(1)(b) which according to the petitioner prescribe an unlawful act by consuming, using, possessing or transporting any intoxicant (other than Opium) or hemp. That the prosecution case is altogether different than what is stated in the chargesheet filed against the petitioner.

6. The Ld. advocate appearing on behalf of the petitioner has also submitted that the trial court as well as the appellate court have failed to consider the mitigating circumstances urged on behalf of the accused inasmuch as it was his first offence and he was of young age and thereby the court ought not to have imposed the sentence as imposed.

7. I have carefully gone through the original case papers from the record and proceedings of Criminal Case No.98/92 of the Ld.JMFC, Chhota Udepur and have also gone through the impugned judgment of the Ld.Addl.Sessions Judge, Baroda. In my opinion there is no jurisdictional error either in the judgment and order of the Ld.2nd Jt.JMFC, Chhota Udepur or the Ld.Addl.Sessions Judge, Baroda. That the question of fact as contended on behalf of the petitioner can hardly be considered in the proceedings of revision as permitted under law. That in over all consideration of the facts and circumstances as apparent from the record, in my opinion, the judgment and order passed by the Ld.JMFC, Chhota Udepur as well as Ld.Additional Sessions Judge, Baroda are just, proper and reasonable and as such no interference is warranted.

8. On the basis of above stated discussion as a result the present Criminal Revision Application fails and stands disposed of as rejected. Rule is discharged, however, in the facts and circumstances of the case, with no order as to costs.

9. Interim relief granted vide order, dated 13.1.1998 suspending the sentence of imprisonment of the petitioner on furnishing fresh bail stands vacated. However, the petitioner is granted time to surrender to the concerned authority on or before February 6, 1998. Office is directed to send the necessary papers to the

trial court or the concerned authority as expeditiously
as possible.

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